



WINE AND SPIRITS WHOLESALERS OF CONNECTICUT, INC.

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TESTIMONY OF WINE AND SPIRITS WHOLESALERS OF CONNECTICUT

In RE: H.B. No. 5021 AN ACT CONCERNING COMPETITIVE ALCOHOLIC LIQUOR PRICING AND HOURS OF OPERATION FOR PERMITTEES.

HB 5021 proposes a series of significant changes to Connecticut's Liquor Control Act; perhaps the most wide sweeping and dramatic changes proposed in more than 30 years. The bill, as originally drafted, sets forth several proposals which, either directly or indirectly, would impact Connecticut wine and spirit wholesalers in a variety of ways. The Wine and Spirits Wholesalers of Connecticut, Inc., that after many discussions with members of the Governor's office and the Office of Policy and Management over the past one and one-half months, has reached a compromise resolving its objections to HB 5021. The WSWC supports the compromise proposals to House Bill 5021 outlined by Commissioner Rubenstein in his testimony to the Committee. The WSWC looks forward to and welcomes the opportunity to work with the General Law Committee, the Governor's office and other stakeholders in crafting the substitute language for HB5021 to give effect to this compromise.

Specifically, the following outlines the major points of the compromise:

1. The requirement that wholesalers file, publish and hold prices for a given month will be retained, however the amending process will be eliminated (a wholesaler's ability to correct for clerical, typographical and other mistakes will be retained).
2. The prohibition against suppliers and wholesalers from discriminating in price (or otherwise) or offering "inducements" to make purchases will be retained.
3. The prohibition of Package Store sales below "Cost" will be retained (subject to limited "loss leaders" and flexibility to move stale products), however, "Cost" will be defined as the lesser of:
 - (a) (i) Actual cost of acquisition; or
 - (ii) Lowest posted wholesale price in Connecticut.
 - (b) Notwithstanding (i) or (ii) above, a retailer may pick up to 5 individual Stock-Keeping Units ("SKU's") -(i.e. Victor's Vodka, Orange 750ml) per month that may be sold up to 10% below the cost as defined in (i) and (ii) above.
4. The maximum number of package store licenses under common ownership shall be limited to 6 (up from 2 in current law). The increase in licenses will be phased in one per year beginning October 1, 2012.
5. The limit on the issuance of package store to on per 2500 people, per municipality will be retained.
6. Quantity Discounts will be permitted, subject to a "cap" (to be further discussed and refined) and channel pricing will be permitted.

The WSWC sought these modifications to HB 5021 because its members had significant concerns over what impact HB 5021 would have on their industry and business. The WSWC voiced these concerns to the Governor's office and OPM. Both listened and as a result the WSWC reached the compromise outlined above. The WSWC believes the compromise mitigates the harms to which wholesalers and their customers would have been subjected under the original proposal.

To assist the Committee in its review of this proposal, the following is a brief summary of the arguments presented to OPM and the Governor's office by the WSWC in support of its positions in reaching the compromise. The WSWC requests that the General Law Committee takes into consideration the concerns of the members of the WSWC as HB 5021 moves through the legislative process. The WSWC understands that the Committee may have questions and concerns regarding the bill in general and may seek to understand in greater detail the nature of the changes which we negotiated with the Governor's office, to that end the WSWC welcomes the opportunity to be a resource to the Committee on such issues.

Price Posting: Retaining "price posting" provides dual benefits of: i) transparency of wholesale pricing to all retailers; and ii) permitting the information necessary to enforce the prohibition of retail sales below cost. Wholesalers are statutorily required to file their prices with the Department of Consumer Protection monthly, most do so electronically, and then publish and distribute the prices for all 33,000 brands (nearly 70,000 SKUs) to all 5,000 (plus) retail licensees. (CGS § 30-63) Thus, the pricing for each product from all wholesalers is available to every retailer who can then determine the "best" price. Similarly all the pricing information necessary to enforce the prohibition against sales below cost is readily available to the DCP. One aspect to the posting process that has received some criticism is the "amending process" wherein wholesalers that were "dualed" on a brand had a short period to lower their price to meet the lowest posted price. Most states which have "post & hold" statutes do not require an amending process because most brands are sold and distributed on an exclusive basis; thus, there is no intra-brand competition. Here in Connecticut, however, all the major spirits wholesalers are dualled on most of the major spirit brands. Allowing for price adjustments through the amending process permitted wholesalers to compete with one another and not be "out-of-the-market" for a given month because their price was uncompetitive. In response to those who viewed the amending process as anti-competitive; the members of the WSWC agreed to the elimination of the amending process.

Anti-discrimination: The anti-discrimination provisions of CGS § 30-63 further Connecticut business interests, allow Connecticut wholesalers to compete on a level playing field free from the industry politics of mega-international manufacturers. Specifically, Connecticut General Statutes § 30-63 prohibits suppliers and wholesalers from providing different prices to different customers for the same item and further prohibits them from providing "inducements" - i.e. commercial bribery. Many spirit brands sold in Connecticut are distributed on a dual basis - that is more than one wholesaler sells the same brand. These Connecticut Companies have invested time, money and other resources to develop the sales and distribution of the products which they carry. Connecticut's franchise law, CGS § 30-17, recognizes and protects their investment. Allowing a supplier to charge one wholesaler different prices than another for the same product undermines the wholesaler's franchise rights and make its investment worthless. Furthermore, permitting wholesalers to charge retailers different prices or permitting them to provide things of "value under the table" makes the requirement of price posting and the transparency in pricing wholly ineffective.

Sales Below Cost: The prohibition of sales below cost is a basic tenant of the socially responsible distribution of beverage alcohol; however like many issues there are contradictory competing forces at play. Current law prohibits a retailer from selling below "cost." Cost is defined as the "posted bottle price" that is the price which a retail would have to pay a wholesaler if they were to purchase a single bottle of a product. (See CGS § 30-68m) Thus, all retailers, both large and small can compete without regard to the amount of alcohol they purchase and sell because none could sell below the cost of the smallest unit that can be purchased by a retailer. Historically, the price differential between the posted bottle price and the cost of the same item purchased in a case quantity was not significant. However, due to the intensive (and expensive) labor that goes into the repackaging and delivery of a single bottle, wholesalers have over time increased the differential between the posted bottle and the case price. The price differential now ranges from as little as pennies on a bottle to as much as thirty to forty percent of the bottle price depending upon the product and the time of the year. This price differential can make it difficult for a retailer to competitively price some products. On the other hand the social harms of "cheap alcohol" are well documented. (See Connecticut Alcohol & Drug Policy Council, July 2008 Report, p 18) Further, when viewed in the context of a changed environment proposed by HB 5021 Connecticut package stores will be presented with the new challenge of competing against public companies and very large privately held companies. Without a "floor" on prices these companies would be able to engage in predatory pricing driving existing Connecticut businesses out-of-business and taking market share of others.

The compromise seeks to strike a balance among these competing interests. Specifically, the compromise provides a price "floor" by prohibiting sales below a retailer's actual cost or the cost at which they could replace the goods they have sold (the lowest posted wholesale price in the month of sale). Additionally, the compromise provides well defined limits for a small (5) selection of "loss leaders". These provisions will give retailers the power to set their own prices and will allow for pricing and marketing innovations; yet, will not allow for unfettered sales below cost protecting against both predatory pricing and mitigating against possible social ills.

Common Ownership of Licenses/Per Capita Ratio – Increasing the number of package store licenses permitted under common ownership from 2 to 9 (particularly in combination with the proposed change to permit grocery stores to own package stores, no limit on the sales below cost and unfettered quantity discounts) will work in furtherance of the introduction of international mega-store chains into Connecticut's package store business. These chain stores do not require the same intensive sales staff that current package stores require. Should these chain stores proliferate wholesalers will require less sales people. These are good paying jobs which represent the largest single category of wholesaler employee. Without the implementation of the compromise which was reached wholesaler sales staff might have been reduced by as much as 30% --several hundred in total.

Quantity Discounts- Channel Pricing. The initial proposal permitted uncapped quantity discounts and was unclear as to whether or not channel pricing would be permitted. Capping quantity discounts ensures that many retailers will be able to take advantage of the cost savings afforded by quantity discounts and at the same time protects local Connecticut retailers from the deep pockets of publicly trade and mega-private retailers. Similarly allowing "channel pricing" – that is different prices for restaurants and bars versus package stores, allows wholesalers to offer competitive prices to retailers without requiring them to purchase large quantities for which they do not have the storage space.

Who are the WSWC Members? The members of the Wine and Spirits Wholesalers of Connecticut ("WSWC") are a key link in the 3-Tier System which controls the distribution of beverage alcohol in this country. Connecticut has 83 licensed beverage alcohol wholesalers. They purchase beverage alcohol from suppliers and manufacturers and in turn market and sell those products to licensed retailers – restaurants and package stores. Connecticut beverage alcohol wholesalers:

- are licensed and regulated by the state of Connecticut and the federal government (83 total);
- are responsible to insure that the wines, spirits and beer brought in to the state by manufacturers and importers are sold and distributed only to licensed retailers (package stores and restaurant);
- collect and remit to the in excess of \$48 million dollars in state excise taxes;
- assist the Department of Revenue Services in the collection of Sales and Use Taxes, in excess of \$140 Million Dollars annually;
- provide in excess of 2,200 direct jobs to Connecticut residents; and
- contribute in excess of \$300 million dollars in direct benefits to the state's economy.

The members of the WSWC are committed to ensuring that the best possible safeguards to prevent the sale of beverage alcohol to minors are in place and adults of legal drinking age consume beverage alcohol responsibly. At the same time they provide an efficient method of distribution which provides access to a wide variety of quality wine and spirits from across the country and around the world. To that end the WSWC has invest more than one-half million dollars since 2008 in social responsibility campaigns. Included in among these programs is the annual public service announcement contest where college students produce and film their own television PSA. These PSAs have been air on excess of 10,000 spots on local and cable television.

Respectfully submitted,



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